IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11999 of 2002
with
CIVIL APPLICATION NO.1640 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIDDHI APARTMENT FLATS OWNERS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11999 of 2002

MR RAJESH K DESAI for Petitioner No. 1

Mr.Mengdey, Asst.GOVERNMENT PLEADER for Respondent No. 1-2

Mr.S.N.Shelat with MR MG NAGARKAR for Respondent No. 3

..... for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 21/04/2004

ORAL JUDGEMENT

When the civil application is taken up for

hearing today simultaneously special civil application is also taken up for final hearing.

2. Rule. Mr.Mengdey, Ld.AGP for respondent Nos 1 and 2 and Mr.Nagarkar with Mr.Shelat for respondent No.3 waives service of rule.

3. The present petition is preferred by the petitioner for declaration that the petitioner is entitled to reconstruct the building as the actual categorisation would fall under G4 category and not under G3 category as treated by the corporation. The petitioner has also prayed for direction to the respondent corporation to approve the plan treating the building of the petitioner as under G4 category and the decision of the corporation for not approving the plan is also under challenge.

4. The petitioner is an association of flat-owners and they are earthquake victims. It is the case of the petitioners that in one complex there were in all 16 flats out of which 8 flats are on one side and 8 flats were on other side and they were connected with the staircase. On account of earthquake in the year 2001 one part comprising of 8 flats had collapsed and the other part, as per the petitioner, was damaged to such an extent that it was not possible for the petitioner to get it repared and to use the same. It is also the case of the petitioner that the damage is to the extent that the other part comprising 8 flats is also required to be demolished and the reconstruction is to be made. The petitioner submitted plan for reconstruction. However, the corporation, sanctioned the plan for 8 flats i.e. for one part of the building which had collapsed, and considered the other part under G3 category where repairs could be made and therefore the corporation did not sanction the plan for other part of 8 flats. As per the corporation there were two types but as per the petitioner there was one complex divided into two blocks. Since the plan for the unit which was treated as G3 category was not sanctioned by the corporation the petitioner has preferred this petition.

On 24.3.04 this court had passed the following order:

"Ld.counsel Mr.Desai appearing for the petitioner states on behalf of the petitioner that an affidavit is filed by the Chairman of the society stating that let the officers of the Municipal

Corporation re-examine the building including the soil test with a view to enable the court to know the exact status of the building. Mr.Shelat has left the matter to the court.

2. Under the circumstances, before the further order is passed and since the matter pertains to earthquake affected persons, it is directed that the Municipal Commissioner shall ensure the reinspection and reexamination of the building including necessary soil test and then shall submit the report within a period of two weeks from today. The petitioner shall incur necessary expenses, if required, for assistance of experts by the Municipal Commissioner."

The aforesaid order was passed with a view to reascertain the actual position of the building. Thereafter the learned counsel appearing for both sides states that on 9.4.04 and 10.4.04 the Committee of experts had visited the building for verifying as to whether the building falls under G3 category or G4 category. Today, Mr.Nagarkar placed on record the report of the committee and as per the report of the committee the building is required to be demolished and Mr.Nagarkar states that as a consequence of this report the building would be required to be treated under G4 category by the corporation.

5. If the building is treated as G4 category, the consequential effect would be that the corporation will be required to sanction the plan for other part of the building comprising of 8 flats in addition to the earlier part of the building comprising 8 flats for which the sanction was already granted. Consequently, in view of the report of the experts submitted and such report having been accepted by both sides, the corporation will also be required to sanction plan for whole building comprising of two parts each of 8 flats, total 16 flats. Even otherwise also, since the petitioners are earthquake victims the approach from the corporation is expected to be sympathetic and on humanitarian considerations.

6. Mr.Nagarkar with Mr.Shelat for the corporation has produced the bill, dated 16.4.04 of the Committee of Experts totalling to Rs.16,200/- and the said bill is also taken on record. Mr.Desai for the petitioner states that the petitioners are agreeable to pay the said bill to the members of the Committee directly by A/C payee cheque. The petitioners are directed to comply with the said statement.

7. Ld.AGP Mr.Mengdey submitted that in view of the subsequent report being accepted by the corporation the same may not be made as a ground for claiming compensation by the petitioners. Mr.Desai for the petitioners has stated that even otherwise also the petitioners are not desirous to claim any additional compensation on the basis of the report submitted by the Committee whereby the part of the building is treated under G4 category.

8. Mr.Nagarkar has declared before the court that the corporation shall sanction the plan now within a period of three weeks from today. Hence, the Municipal Commissioner is directed to act as per the statement and sanction the plan accordingly.

9. In view of the above, since the corporation is required to sanction the plan submitted by the petitioner comprising of two blocks each of 8 flats totalling to 16 flats, no further directions are required to be issued.

10. Petition is allowed to the aforesaid extent. Rule is made absolute. In the facts and circumstances of the case there shall be no order as to costs.

11. In view of the order passed in main petition no order is required to be passed in CA No.1640/03. CA is disposed of accordingly.

DS permitted.

21.4.04 (JAYANT PATEL,J)